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before he is bound. It also permits the sale of the property to be unaffected by the death of the grantor, and simplifies complicated closings.

When escrow agreements are employed, it guarantees to the grantor performance before the other party receives the fruits of the transaction. The escrow arrangement is a beneficial device since it protects both the grantor and the grantee, and the use of it is unqualifiedly recommended.

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VANDALISM UNDER AUTOMOBILE INSURANCE

INTRODUCTION

Safely, it can be said that the average person knows very little about his automobile insurance policy. When he contracts for a policy he gets in touch with the insurance company or its representative and orders "liability, comprehensive, and collision coverage." He has little actual knowledge of what he is getting. The coverage he asks for often has been suggested, with no further explanation of what it includes, by associates, friends, or insurance agents. He has been told that this coverage, in the proper proportions, protects him adequately. When the policy is received, it is put away immediately for safekeeping, and the insured never bothers to read it, until the day of the accident. Then he finds his insurance is not as complete as he had expected.

When an individual finds his car has been damaged by an unexplainable source he turns to his policy to find a remedy for his loss. Most often he will come upon the "vandalism clause" under "comprehensive coverage." Under this provision, he seeks relief, but frequently the relief eludes him.

COMPREHENSIVE COVERAGE

Universally, automobile insurance contracts provide coverage for "comprehensive loss." The terms of the insuring agreement usually are set out as follows:

> Coverage Y—Comprehensive Loss of or Damage to the Automobile, Except by Collision or Upset. To pay for any direct and *accidental* loss of or damage to the automobile, hereinafter called loss, *except loss caused by collision of the automobile with another object,* or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, *vandalism,* riot or civil commotion shall not be deemed loss caused by collision or upset. (Italics supplied).

It is obvious from the expressed wording of the policy that damage incurred by collision is not covered by this provision.[1] Recovery for vandalism,

1. Recovery for collision is provided in another portion of the policy where the insurer undertakes to be liable for the loss, but only for the amount of each loss in excess of the deductible amount (usually twenty-five or fifty dollars, depending on the insured's coverage).

on the other hand, is allowed, since, according to the policy, it is not loss caused by collision. But does anyone ever recoup damages under this term, "vandalism"?

VANDALISM

"Vandalism" is used widely in the comprehensive coverage clause of automobile insurance policies. However, until 1945,[2] the writer could not discover a single judicial interpretation in the United States construing the word as used in automobile policies.

Webster's New International Dictionary[3] defines "vandalism" as the "hostility to or wilful destruction or defacement of things of beauty, as works of art, literature, historical monuments . . . ." In ordinary usage, the word is not confined to the destruction of art, but has been extended in its meaning to include destruction of property generally, and, obviously, when applied in insurance policies it is given a broad construction as will be verified, *infra*.

INSURANCE IN GENERAL

"Insurance" is a contract of indemnity to secure against contingent loss.[4] The language used in the words and phrases of an insurance policy is construed according to its popular and usual sense.[5] If an insurance contract is unambiguous, then it should be explained and interpreted according to the "plain, ordinary, natural, fair, usual, and popular, rather than philosophical or technical sense."[6] In such an instance where the policy is plain and certain, the court will not rewrite the contract for the parties in an attempt to construe it.[7] However, when an insurance policy is ambiguous and susceptible to more than one construction, the court will lean to that which is more reasonable, probable and favorable, and most fairly effectuates its purpose.[8] Where two interpretations equally fair may be given, that which gives a greater indemnity will prevail.[9] If the construction of the contract leads to an absurd conclusion its explanation must be abandoned to fulfill the general object of the policy.[10] In all cases, the policy must be construed liberally in favor of the insured and strictly against the insurer.[11]

Insurance companies who issue policies outside the state of their home

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2. Unkelsbee v. Homestead Fire Ins. Co. of Baltimore, 41 A.2d 168 (D. C. 1945).
3. Vol. III at 2816 (2nd ed. 1939).
4. Franklin Life Ins. Co. v. Tharp, 130 Fla. 546, 178 So. 300 (1938); Brock v. Hardie, 114 Fla. 670, 154 So. 690 (1934).
5. Aetna Casualty & Surety Co. v. Cartmel, 87 Fla. 495, 100 So. 802 (1924).
6. Goldsby v. Gulf Ins. Co., 117 Fla. 889, 158 So. 502 (1935); 1 COUCH, CYCLOPEDIA OF INSURANCE LAW 363 (1st ed. 1929).
7. Kansas City Life Ins. Co. v. Freeman, 120 F.2d 106 (5th Cir. 1941).
8. *Ibid.*; Inter-Ocean Casualty Co. v. Hunt, 138 Fla. 167, 189 So. 240 (1939); New York Life Ins. Co. v. Kincaid, 136 Fla. 120, 186 So. 675 (1939); Franklin Life Ins. Co. v. Tharp, 130 Fla. 546, 178 So. 300 (1938).
9. L'Engle v. Scottish Union & Nat'l Fire Ins. Co., 48 Fla. 82, 37 So. 462 (1912).
10. Inter-Ocean Casualty Co. v. Hunt, 138 Fla. 167, 189 So. 240 (1939); New York Life Ins. Co. v. Kincaid, 136 Fla. 120, 186 So. 675 (1939).
11. Fireman's Fund Ins. Co. of San Francisco v. Boyd, 45 So.2d 499 (Fla. 1950); Williamson v. Nurses' Mut. Protective Corp., 142 Fla. 225, 194 So. 643 (1940); Poole v. Travelers Ins. Co., 130 Fla. 806, 179 So. 138 (1938).

office are subject to applicable statutes and laws of the state of issuance.[12] Because the insurance business is affected with a public interest it is subject to reasonable regulation by the legislature.[13]

VANDALISM ADJUDICATED

The cases adjudicating a situation based on vandalism to an automobile are sparse. This writer feels the situation exists for the following reasons: (1) Many insured persons who have "comprehensive" also have "collision" coverage. As a result, rather than go to the expense of litigation, they are prone to accept the amount of damage less the deductible amount (usually fifty dollars) secured to them by the latter provision. (2) In instances where vandalism is more likely to be the cause, the insurance companies would rather settle out of court, than be subject to an adverse adjudication. (3) Many cases never arise because too few insured individuals realize the importance of the "vandalism clause."

An examination of the litigation and adjudication based on vandalism will make the problem that exists self evident. In a Vermont case, *Moore v. Union Mutual Fire Ins. Co.*,[14] an automobile while parked, was damaged by an unknown source. For the purposes of litigation, it was agreed that the damage was the result of an impact from another automobile. Recovery was denied under the comprehensive clause, because this was held to be a "collision of the automobile with another object." The court said:

> A collision implies an impact, the sudden contact of a moving body with an obstruction in its line of motion. Both bodies may be in motion, or one in motion and the other stationary. Clearly it matters not whether the car or the other object is in motion.[15]

Contact of a *moving automobile* with a stationary object has been held to be a collision within the meaning of the insurance policy where there was a meeting with the bed of a stream,[16] brick, wood and dirt with which a hole had been filled,[17] an overhanging plank,[18] a stump,[19] a paved highway,[20] and a bank of a ditch.[21]

Where a *moving object* has come in contact with a stationary automobile, a collision has been said to exist. This was the case where a

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12. American Fire Ins. Co. v. King Lumber & Mf'g Co., 74 Fla. 130, 77 So. 168 (1917), *aff'd*, 250 U.S. 2 (1919).
13. Feller v. Equitable Life Assur. Soc. of U. S., 57 So.2d 581 (Fla. 1952).
14. 112 Vt. 218, 22 A.2d 503 (1941).
15. *Id.* at 504. *Accord*, Aetna Casualty & Surety Co v. Cartmel, 87 Fla. 495, 100 So. 802 (1924).
16. Ringo v. Automobile Ins. Co., 143 Ore. 420, 22 P.2d 887 (1933).
17. Hank v. U. S. Fidelity & Guaranty Co., 15 La. App. 97, 130 So. 118 (1930).
18. C. & J. Commercial Driveway v. Fidelity & Guaranty Fire Corp., 258 Mich. 624, 242 N.W. 789 (1932).
19. Yorkshire Ins. Co. v. Bunch-Morrow Motor Co., 212 Ala. 588, 103 So. 670 (1925).
20. Great Amer. Mut. Indemnity Co. v. Jones, 111 Ohio St. 84, 144 N.E. 596 (1924).
21. T. C. Power Motor Co. v. U.S. Fire Ins. Co., 69 Mont. 563, 223 Pac. 112 (1924).

stationary automobile was hit by a scoop from a derrick[22] and in another instance struck by rushing flood water.[23]

The *Moore* case, *supra*, assumed that the damage grew out of contact between two automobiles, but was it correct to assume that this was an accident? Granting that a moving automobile caused the damage, could it not have been the *intention* of the driver to do just that? Hence there would be no accident, but a good case of vandalism. However, it has been said that in the absence of evidence there is a presumption that the collision was accidental rather than intentional.[24]

The first judicial interpretation of vandalism appeared, in the District of Columbia, in *Unkelsbee v. Homestead Fire Ins. Co. of Baltimore*.[25] In this case, a three-and-a-half year old boy entered a parked automobile and caused it to start down an incline so that it collided with another automobile parked at the curb. The majority of the court held that the loss was attributable to vandalism. "Any unusual destruction wrought in the doing of a wrongful act, does . . . merit and receive the title 'vandalism.' "[26] The court went further; they said that whether the injury was *intentional or not* it was included in comprehensive coverage.[27] This would seem to indicate that it is immaterial whether the damage grew out of an *accidental or intentional* act, and the presumption of accident advanced above should have no bearing on the merits of a suit based upon vandalism.

In the *Unkelsbee* case, it was the opinion of the court that the insurance policy was lacking.

> Had the insurer intended that this final sentence [see last sentence of Coverage Y, *supra*] which to the average member of the public purchasing insurance would seem to be in his favor, was to effect a restriction of liability by extending the exception of 'loss caused by collision' to cases where the collision was not the proximate cause of loss, we think more apt language should have been used, and notice to the public should have been conveyed in a more informative way than by application of the rule of ejusdem generis.[28]

Here the court called for a liberal interpretation of the comprehensive provision. They could find no place for a strict construction in insurance policies. The *Unkelsbee* case made a significant stand. It recognized that vandalism was provided for in the comprehensive clause and allowed recovery for it, rather than permit the term to be obscured behind the misnomer of a "collision." An insurance policy should cogently specify what vandalism means and is to include. In the absence of clarification

22. Universal Service Co. v. American Ins. Co., 213 Mich. 523, 181 N.W. 1007 (1920).
23. Long v. Royal Ins. Co., 180 Wash. 360, 40 P.2d 132 (1935).
24. Rich v. United Mut. Fire Ins. Co., 102 N.E.2d 431, 432 (Mass. 1951); Hunt v. Merchants & Manufacturers Ins. Co., 188 Tenn. 576, 221 S.W.2d 809 (1949).
25. 41 A.2d 168 (D. C. 1945).
26. *Id.* at 170.
27. *Id.* at 172.
28. *Ibid.*

the insurance companies should find the policies interpreted in favor of the insured since the companies write the contract and they ought to put their best foot forward. This court recognized these principles.

In a Tennessee case, *Hunt v. Merchants & Manufacturers Ins. Co.*,[29] the insured's automobile was damaged, due to an unknown cause. Hunt sought to recover under "comprehensive" on the basis that the injury might have been caused by a deliberate act. To this, the court responded that the physical condition of the automobile establishes a collision, and further, in the absence of other evidence there is a presumption of an accident. In essence, this case followed the opinion in the *Moore* case, *supra*.

In *Rich. v. United Mut. Fire Ins. Co.*,[30] a Massachusetts decision, the insured parked his automobile in front of his home, but later found it at the foot of the hill damaged by contact with a tree. The court admitted that the automobile could have been moved from its position by use of human force, but the probability that it was accidental was as strong as the probability that it was intentional, and it was a "matter of speculation, conjecture, and surmise." Once again, the court advances the proposition that the insured has the burden of proving the collision was the result of vandalism.[31] Vandalism, they said:

> . . . is to be given the meaning attributed to it in common use. Vandalism as used in the policy refers to such wanton and malicious acts as are intended to damage or destroy the property insured. Such acts are similar to those which according to criminal law are punishable as malicious mischief.[32]

The court implied the automobile was caused to run downhill by a child. In reciting the facts, they state that children were playing in the area where the automobile was parked and that the insured was informed of the damage by one of them. However, they indicate that even if it had been the result of a child's act they would have considered it negligence and would not have allowed recovery under vandalism. Query: Are not children capable of intentional destruction? Had they adopted their suggested view, this decision would have been directly *contra* to the *Unkelsbee* case, *supra*.

Solutions to the Problem

The problem of what constitutes vandalism under automobile insurance policies appears to be a mute one in most of the United States. If the superior courts across the country are faced with the situation, as eventually they are bound to be, it would be difficult to predict the outcome.

Actually the matter need never reach the courts. The situation can be solved easily by the insurance companies themselves. Obviously, what is needed is a good definition for a term that is now vague and ambiguous.

29. 188 Tenn. 576, 221 S.W.2d 809 (1949).
30. 102 N.E.2d 431 (1951).
31. *Id.* at 432.
32. *Ibid.*

A clearly defined provision in the insurance policy would lessen, if not completely extinguish, the problem.

In the absence of a definition by the insurance companies, the courts will have to resolve the situation, since the comprehensive clause as it now appears is extremely ambiguous. One sentence of the provision provides for recovery for "accidental loss" not caused by collision. In the next sentence, vandalism is expressly excluded from "loss by collision." Vandalism, as the courts have construed it, is an intentional act of destruction. Accident, however, is an unexpected or unintentional occurrence; it is exactly opposite to vandalism. Therefore, how can vandalism be included in the term accident? How can an intentional act be unintentional? The use of the terms, "accident" and "vandalism," within the same coverage creates an ambiguity. It has been pointed out earlier that ambiguities must be construed in favor of the insured.

A contrary decision can be reached by following a strict view. Recovery for vandalism has been denied and could be again. Such a conclusion could be based on either: (1) the presumption of an accident over an intentional act; or (2) the assumption that the collision is the proximate cause, and not the intent; or (3) both (1) and (2).

The presumption that damage is the result of an accident rather than an intentional act, seems to be erroneous in the matter of vandalism. This presumption probably was created with double indemnity life insurance policies in mind. Under this type of policy the beneficiary of the insured receives double compensation if the insured met death accidentally; therefore, an interpretation in favor of the insured, in the absence of a known cause of death, will be presumed an accident rather than a suicide. This permits maximum recovery under the policy. If the insured is to receive similar benefits, such as maximum recovery, under ordinary automobile insurance, it seems incorrect to create a presumption of accident when vandalism (like accident in the original presumption) provides the greater remedy. Certainly, the comprehensive clause should be construed in this fashion, since creating a presumption of vandalism, in the absence of contrary proof, would allow greater recovery and would operate in the insured's favor.

Generally, where the courts have denied "comprehensive" recovery they seem to be looking to the "proximate cause of the damage." To them, it is the collision, and not the intent of the perpetrator, that is the proximate cause. It appears that the courts in question will not recognize a collision intentionally caused. In giving effect to their interpretation there never can be vandalism, since to have damage there must always be a collsion of two bodies, and it is unimportant to determine the intent, or lack of it, in the person motivating the impact force. This logic seems to be based on false reasoning and leads to an equally false conclusion.

An opportunity to follow a liberal view, one that will equitably effectuate the purpose of automobile insurance, is open to the courts. Where the

damage is such that it will be assumed to be done *by an automobile*, the presumption of an accident can be refuted easily. In Florida, as in many other states, there is a statute[33] creating a duty on the part of an automobile driver in the event he collides with an unattended vehicle. Such statute provides that the driver immediately shall notify the owner or operator of the stationary car. Failure to perform this duty is a misdemeanor.[34] It would seem that a wanton and malicious intent to destroy property is imposed by law if a driver fails to notify the owner of the damaged automobile. Since the intent is created, recovery for vandalism should be permissible in this situation.

Where the damage is such that it can be assumed to be caused *by a person* there is a statute which can help to bring the act under vandalism. In the *Rich* case, *supra*, vandalism was said to grow out of acts which are punishable as malicious mischief in criminal law. Florida, by statute,[35] provides that anyone who "wilfully and maliciously destroys or injures the personal property of another" is subject to not more than a year imprisonment or a fine not greater than a thousand dollars. Where a person inflicts damage to property and remains silent, would not this imply that he intended a malicious act irrespective of it becoming malicious by operation of law?

In the construction of automobile insurance policies, the entire contract must be considered, and not certain clauses or fragmentary parts thereof.[36] The purpose of the whole contract is to provide indemnity for the insured.[37] Why not give effect to this purpose? By using liberal definitions, indemnity can be achieved through interpreting vandalism in favor of the insured in pursuance of the suggestions offered by the writer.

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33. FLA. STAT. § 317.10 (1951).
34. FLA. STAT. § 317.04 (1951).
35. FLA. STAT. § 822.18 (1951).
36. Jones v. U. S. Fidelity & Guaranty Co., 19 F. Supp. 799 (N.D. Fla. 1937).
37. Franklin Life Ins. Co. v. Tharp, 130 Fla. 546, 178 So. 300 (1938).

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